

§ 39.121

§ 39.121 State responsibilities following project completion.

(a) A State that has received an Establishment, Expansion, and Improvement Project grant or an Operation and Maintenance Project grant shall monitor use of the cemetery by various subgroups and minority groups, including women veterans. If VA determines that under-utilization by any of these groups exists, the State shall establish a program to inform members of these groups about benefits available to them. If a significant number or portion of the population eligible to be served or likely to be directly affected by the grant program needs benefits information in a language other than English, the State shall make such information available in the necessary language.

(b) A State veterans cemetery that has received an Establishment, Expansion, and Improvement Project grant or an Operation and Maintenance Project grant shall be operated and maintained as follows:

(1) Buildings, grounds, roads, walks, and other structures shall be kept in reasonable repair to prevent undue deterioration and hazards to users.

(2) The cemetery shall be kept open for public use at reasonable hours based on the time of the year.

(c) VA, in coordination with the State, shall inspect the project for compliance with the standards set forth in subpart B of this part for Establishment, Expansion, and Improvement Projects and with the standards set forth in subpart C of this part for Operation and Maintenance Projects at the project's completion and at least once in every 3-year period following completion of the project throughout the period the facility is operated as a State veterans cemetery. The State shall forward to the Director, State Cemetery Grants Service, a copy of the inspection report, giving the date and location the inspection was made and citing any deficiencies and corrective action to be taken or proposed.

(d) Failure of a State to comply with any of paragraphs (a) through (c) of this section shall be considered cause for VA to suspend any payments due

38 CFR Ch. I (7-1-11 Edition)

the State on any project until the compliance failure is corrected.

(Authority: 38 U.S.C. 501, 2408; and E.O. 13166, 65 FR 50121)

§ 39.122 Inspections, audits, and reports.

(a) A State will allow VA inspectors and auditors to conduct inspections as necessary to ensure compliance with the provisions of this part. The State will provide to VA evidence that it has met its responsibility under the Single Audit Act of 1984 (see part 41 of this chapter).

(b) A State will make an annual report on VA Form 40-0241 (State Cemetery Data) signed by the authorized representative of the State. These forms document current burial activity at the cemetery, use of gravesites, remaining gravesites, and additional operational information intended to answer questions about the status of the grant program.

(c) A State will complete and submit to VA a VA Form 40-0895-13 (Certification Regarding Documents and Information Required for State or Tribal Government Cemetery Construction Grants-Post Grant Requirements) to ensure that the grantee is aware of and complies with all grant responsibilities and to properly and timely close out the grant.

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0559)

PART 40—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF VETERANS AFFAIRS PROGRAMS AND ACTIVITIES

Sec.

40.1 Purpose.

40.2 Definitions.

40.3 Programs and activities.

40.4 General.

40.5 Federal interagency coordination.

40.6 Selection of programs and activities.

40.7 Communicating with State and local officials concerning VA's programs and activities.

40.8 Commenting on proposed Federal financial assistance and direct Federal development.

Department of Veterans Affairs

§ 40.4

- 40.9 Comment receipt and response to comments.
- 40.10 Making efforts to accommodate intergovernmental concerns.
- 40.11 Interstate.
- 40.12 [Reserved]
- 40.13 Waiver.

AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); section 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506); sec. 204 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended (42 U.S.C. 3334).

SOURCE: 48 FR 29413, June 24, 1983; 48 FR 31854, July 12, 1983, unless otherwise noted.

§ 40.1 Purpose.

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs", issued on July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968 and section 204 of the Demonstration Cities and Metropolitan Development Act of 1966.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on State processes and on State, areawide, regional, and local coordination for review of proposed Federal financial assistance and direct Federal development.

(c) These regulations are intended to improve the internal management of the VA, and are not intended to create any right or benefit enforceable at law by a party against the VA or its officers.

(Authority: 42 U.S.C. 4231(b))

§ 40.2 Definitions.

For the purposes of §§ 40.1 through 40.13, the following definitions apply:

(a) *VA* means the Department of Veterans Affairs.

(b) *Order* means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled "Intergovernmental Review of Federal Programs."

(c) *Secretary* means the Secretary of Veterans Affairs of the Department of Veterans Affairs or an official or employee of VA acting for the Secretary under delegation of authority.

(d) *State* means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

(e) *Emergency* means a sudden, urgent, unforeseen situation in which immediate action is needed to prevent or respond to significant harm to life or property. Harm to property would include damage to the environment.

(f) *Unusual circumstances* means the end of a fiscal year, a statutory deadline or any other circumstance making it impracticable for the agency to provide 60 days for comment.

(g) *Affected* means for purposes of interstate situations those States physically affected by the specific plans and projects.

(Authority: 42 U.S.C. 4231(b))

§ 40.3 Programs and activities.

The Secretary publishes in the FEDERAL REGISTER a list of VA's programs and activities that are subject to these regulations and identifies which of these are subject to the requirements of section 204 of the Demonstration Cities and Metropolitan Development Act.

(Authority: 42 U.S.C. 4231(b))

§ 40.4 General.

(a) The Secretary provides opportunities for consultation by elected officials of those State and local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance from, or direct Federal development by, VA.

(b) If a State adopts a process under the order to review and coordinate proposed Federal financial assistance and direct Federal development, the Secretary, to the extent permitted by law:

(1) Uses the State process to determine official views of State and local elected officials;

(2) Communicates with State and local elected officials as early in a program planning cycle as is reasonably feasible to explain specific plans and actions;

§ 40.5

(3) Makes efforts to accommodate State and local elected officials' concerns with proposed Federal financial assistance and direct Federal development that are communicated through the State process;

(4) Seeks the coordination of views of affected State and local elected officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas; and

(5) Supports State and local governments by discouraging the reauthorization or creation of any planning organization which is federally-funded, which has a limited purpose, and which is not adequately representative of, or accountable to, State or local elected officials.

(Authority: 42 U.S.C. 4231(b))

§ 40.5 Federal interagency coordination.

The Secretary, to the extent practicable, consults with and seeks advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and VA regarding programs and activities covered under these regulations.

(Authority: 42 U.S.C. 4231(b))

§ 40.6 Selection of programs and activities.

(a) A State may select any program or activity published in the FEDERAL REGISTER in accordance with § 40.3 of this part, for intergovernmental review under these regulations. Each State, before selecting programs and activities shall consult with local elected officials.

(b) Each State that adopts a process shall notify the Secretary of the VA's programs and activities selected for that process.

(c) A State may notify the Secretary of changes in its selections at any time. For each change, the State shall submit to the Secretary an assurance that the State has consulted with local elected officials regarding the change. The VA may establish deadlines by which States are required to inform

38 CFR Ch. I (7-1-11 Edition)

the Secretary of changes in their program selections.

(d) The Secretary uses a State's process as soon as feasible, depending on individual programs and activities, after the Secretary is notified of its selections.

(Authority: 42 U.S.C. 4231(b))

§ 40.7 Communicating with State and local officials concerning VA's programs and activities.

The Secretary provides notice to directly affected State, areawide, regional, and local entities in a State of proposed Federal financial assistance or direct Federal development if:

(a) The State has not adopted a process under the order; or

(b) The assistance or development involves a program or activity not selected for the State process.

This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which VA in its discretion deems appropriate.

(Authority: 42 U.S.C. 4231(b))

§ 40.8 Commenting on proposed Federal financial assistance and direct Federal development.

(a) Except in unusual circumstances, the Secretary gives State processes or State, areawide, regional and local officials and entities at least 60 days from the date established by the Secretary to comment on proposed direct Federal development or Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with VA have been delegated.

(c) Applicants for programs and activities subject to section 204 of the Demonstration Cities and Metropolitan Act shall allow areawide agencies a 60-day opportunity for review and comment.

(Authority: 42 U.S.C. 4231(b))

§ 40.9 Comment receipt and response to comments.

(a) The Secretary follows the procedures in § 40.10 if:

Department of Veterans Affairs

§ 40.11

(1) A State office or official is designated to act as a single point of contact between a State process and all Federal agencies, and

(2) That office or official transmits a State process recommendation for a program selected under § 40.6.

(b)(1) The single point of contact is not obligated to transmit comments from State, areawide, regional or local officials and entities where there is no State process recommendation.

(2) If a State process recommendation is transmitted by a single point of contact, all comments from State, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a State has not established a process, or is unable to submit a State process recommendation, State, areawide, regional and local officials and entities may submit comments either to the applicant or to VA.

(d) If a program or activity is not selected for a State process, State, areawide, regional and local officials and entities may submit comments either to the applicant or to VA. In addition, if a State process recommendation for a nonselected program or activity is transmitted to VA by the single point of contact, the Secretary follows the procedures of § 40.10 of this part.

(e) The Secretary considers comments which do not constitute a State process recommendation submitted under these regulations and for which the Secretary is not required to apply the procedures of § 40.10 of this part, when such comments are provided by a single point of contact, by the applicant, or directly to the VA by a commenting party.

(Authority: 42 U.S.C. 4231(b))

§ 40.10 Making efforts to accommodate intergovernmental concerns.

(a) If a State process provides a State process recommendation to VA through its single point of contact, the Secretary either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the State process; or

(3) Provides the single point of contact with such written explanation of the decision, as the Secretary in his or

her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The VA will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification five days after the date of mailing of such notification.

(Authority: 42 U.S.C. 4231(b))

§ 40.11 Interstate.

(a) The Secretary is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in States which have adopted a process and which select VA's program or activity.

(3) Making efforts to identify and notify the affected State, areawide, regional, and local officials and entities in those States that have not adopted a process under the order or do not select VA's program or activity;

(4) Responding pursuant to § 40.10 of this part if the Secretary receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with VA have been delegated, or

(b) The Secretary uses the procedures in § 40.10 if a State process provides a State process recommendation to VA through a single point of contact.

(Authority: 42 U.S.C. 4231(b))

§ 40.12

§ 40.12 [Reserved]

§ 40.13 Waiver.

In an emergency, the Secretary may waive any provision of these regulations.

(Authority: 42 U.S.C. 4231(b))

PART 41—AUDITS OF STATES, LOCAL GOVERNMENTS, AND NON-PROFIT ORGANIZATIONS

Subpart A—General

Sec.

41.100 Purpose.

41.105 Definitions.

Subpart B—Audits

41.200 Audit requirements.

41.205 Basis for determining Federal awards expended.

41.210 Subrecipient and vendor determinations.

41.215 Relation to other audit requirements.

41.220 Frequency of audits.

41.225 Sanctions.

41.230 Audit costs.

41.235 Program-specific audits.

Subpart C—Auditees

41.300 Auditee responsibilities.

41.305 Auditor selection.

41.310 Financial statements.

41.315 Audit findings follow-up.

41.320 Report submission.

Subpart D—Federal Agencies and Pass-Through Entities

41.400 Responsibilities.

41.405 Management decision.

Subpart E—Auditors

41.500 Scope of audit.

41.505 Audit reporting.

41.510 Audit findings.

41.515 Audit working papers.

41.520 Major program determination.

41.525 Criteria for Federal program risk.

41.530 Criteria for a low-risk auditee.

APPENDIX A TO PART 41—DATA COLLECTION FORM (FORM SF-SAC)

APPENDIX B TO PART 41—OMB CIRCULAR A-133 COMPLIANCE SUPPLEMENT

AUTHORITY: 5 U.S.C. 301; 31 U.S.C. 7501 *et seq.*; 38 U.S.C. 501, OMB Circular A-133, and as noted in specific sections.

SOURCE: 70 FR 52249, Sept. 1, 2005, unless otherwise noted.

38 CFR Ch. I (7-1-11 Edition)

Subpart A—General

§ 41.100 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

(Authority: Pub. L. 104-156; 110 Stat. 1396)

§ 41.105 Definitions.

Audit finding means deficiencies which the auditor is required by § 41.510(a) to report in the schedule of findings and questioned costs.

Auditee means any non-Federal entity that expends Federal awards which must be audited under this part.

Auditor means an auditor, that is a public accountant or a Federal, State or local government audit organization, which meets the general standards specified in generally accepted government auditing standards (GAGAS). The term auditor does not include internal auditors of non-profit organizations.

CFDA number means the number assigned to a Federal program in the Catalog of Federal Domestic Assistance (CFDA).

Cluster of programs means a grouping of closely related programs that share common compliance requirements. The types of clusters of programs are research and development (R&D), student financial aid (SFA), and other clusters. “Other clusters” are as defined by the Office of Management and Budget (OMB) in the compliance supplement or as designated by a State for Federal awards the State provides to its subrecipients that meet the definition of a cluster of programs. When designating an “other cluster,” a State shall identify the Federal awards included in the cluster and advise the subrecipients of compliance requirements applicable to the cluster, consistent with § 41.400(d)(1) and § 41.400(d)(2), respectively. A cluster of programs shall be considered as one program for determining major programs, as described in § 41.520, and, with the exception of R&D as described in § 41.200(c), whether a program-specific audit may be elected.

Cognizant agency for audit means the Federal agency designated to carry out